THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE DR.JUSTICE G.YETHIRAJULU

WRIT PETITION NO.26446 OF 2005

(DATED : 29.12.2005)

Between:

M/s.Progressive Associates rep. by its Authorised

Signatory P.Hari Prasad S/o late P.B.K.Rao

Yusufguda, Hyderabad

…Petitioner

A n d

Chair Person, Debts Recovery Tribunal, Chennai & others

…Respondents

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE DR.JUSTICE G.YETHIRAJULU

WRIT PETITION NO.26446 OF 2005

ORDER: (Per Hon'ble Sri Justice B.Prakash Rao)

Heard Ms.V.Uma Devi, learned counsel for the petitioner, Sri A.Raja Shekar Reddy, learned Assistant Solicitor General of India appearing on behalf of Respondent No.1, Sri B.Chandrasen Reddy, learned counsel appearing on behalf of respondent No.3, and Sri K.V.Subramanya Narsu, learned counsel appearing on behalf of Respondent No.4.

The petitioner herein, who is one of the bidders in an auction conducted by Respondent No.6, an Advocate Commissioner, on behalf of Respondent No.2, files this writ petition *inter alia* seeking to assail the orders in M.A.No.156 of 2005 dated 18.11.2005 on the file of Respondent No.1 herein, as illegal, arbitrary and to set aside the same.

Briefly stated, the facts of the case are that, in pursuance of a claim for recovery of an amount of Rs.1,72,04,556/-, made by Respondent No.4, which is a bank, against 5th respondent, which is a company as its dues in O.A.No.97 of 2004, the respondent No.2, the Tribunal, appointed Respondent No.6 as an Advocate Commissioner as per order dated 5.11.2004 to conduct auction of the assets belonging to the 5th respondent company. Accordingly, respondent No.6 issued a Notification on 20.6.2005 for conducting auction in respect of whole plant, machinery, furniture and accessories etc. belonging to the said company i.e., 5th respondent on 29.6.2005 in the premises of Respondent No.4 bank. In response thereto eleven bidders including the petitioner herein participated in the auction. The petitioner gave a bid offer of Rs.35,40,000/- whereas the other bidder namely, M/s Raja Rajeshwari Steel Traders, Hyderabad, gave a bid offer of Rs.35,50,000/-, which is the highest bid in whose favour, the auction was knocked down and accordingly, he was declared as the successful bidder and all the participants received back their EMDs. However, since the said successful bidder M/s. Raja Rajeswari Steel Traders failed to deposit the balance 75% of the bid amount within the stipulated time, surprisingly, the respondent No.6, the Advocate Commissioner, invited the third respondent herein who was in fact placed at the third place with a bid of Rs.34,00,000/-, asking his willingness to deposit Rs.35,50,000/-. Thereupon, Respondent No.6 informed the Tribunal about these developments and the amount

deposited by M/s.Raja Rajeshwari Steel Traders was returned. In response to the letter of Respondent No.6, the third respondent deposited the bid amount of Rs.35,50,000/- by way of Demand Draft in favour of Registrar and further proceedings were taken even for handing over assets to Respondent No.3. However, on the objections raised by the petitioner in regard to the procedure adopted in directly inviting offer from respondent No.3, who was only at third place amongst the bidders instead of calling upon the petitioner herein, who was at second place, in terms of the bid amount, an order was passed in I.A.No.1183 of 2004 noting that the auction conducted earlier was cancelled by the Advocate Commissioner and a fresh auction was proposed to be held and the Advocate Commissioner was directed to report by 26.8.2005. Consequently, a tender notification was also issued on 4.8.2005 calling for tenders afresh. As against the said orders of cancellation, respondent No.3 preferred an appeal to respondent No.1 in M.A.No.156 of 2005 and the same was ultimately allowed as per orders dated 18.11.2005 only on the ground that having accepted the offer of third respondent, the auction ought not to have been cancelled without any proper notice. Therefore, challenging the said orders of Respondent No.1, the case of the petitioner is that the entire procedure adopted by the respondent No.6 is bad, illegal and Respondent No.3 has absolutely no right to make any claim over and above the petitioner, who stands above the respondent No.3 in terms of the quantum of the bid offer. Hence the writ petition.

Respondent No.3 filed a detailed counter affidavit supporting the orders of the first respondent in an appeal filed by him on the ground that in terms of the offer made by respondent No.6, the third respondent expressed his willingness and accordingly deposited the entire amount and therefore, there is no illegality in the approach and the same having been cancelled by the Tribunal, the first respondent has rightly allowed the appeal. Hence there are absolutely no merits in the writ petition and the same is liable to be dismissed.

On behalf of respondent No.4, Bank, it was their case that they have nothing to do with the procedure adopted and they are only interested in the recovery of amount for which the auction was held.

On hearing the counsel on either side and on perusal of the material, the main question, which involved in this writ petition, is as to whether on the facts and circumstances, the auction conducted by respondent No.6 and the proceedings of the respondent No.1 in appeal at the instance of respondent No.3 are valid?

There is no dispute to the basic facts that the 5th respondent vowed a substantial amount to respondent No.4, who has approached respondent No.2 herein for recovery. In pursuance thereof, Respondent No.6, an Advocate was appointed as Advocate Commissioner for the purpose of conducting auction. Accordingly, he issued a notification as stated above and ultimately of the bid offers received, the offer of M/s.Raja Rajeswari Steel Traders was the highest and successful bid with a bid offer of Rs.35,50,000/-, whereas the petitioner's offer was Rs.35,40,000/- and the bid offer of the third respondent was only Rs.34,00,000/- Therefore, admittedly, on the face of it, the third respondent was standing at the third place on the basis of the bid amounts received. Though the highest bid offer of M/s.Raja Rajeswari Steel Traders was accepted, but, however, as the said successful bidder could not deposit the balance 75% within the stipulated time, the respondent No.6 has to take recourse to other alternatives.

In regard to the procedure contemplated, the learned counsel appearing on behalf of the petitioner has failed to show any rules and regulations or format as to how and in what manner, the Commissioner has to proceed. Further, the learned counsel also failed to make out that there is any right as such conferred in the next highest bid offerer. Be that as it may, the facts show that after the highest successful bidder failed to deposit the amount, respondent No.6 has taken steps directly contacting respondent No.3 without any intervention of respondent No.2 or even the respondent No.4, the bank and much less with any notice to other bidders. Respondent No.6 directly called upon respondent No.3 about their willingness to deposit Rs.35,50,000/-, at which rate the highest amount was knocked down. Thereupon, respondent No.3 has accepted the same. In this connection, there is no proper explanation or any support from law coming forth on behalf of respondent No.6 as to how such a direct offer was made with respondent No.3 when similar

such offers were available to be considered either by way of negotiations or otherwise. The respondent No.6 could not have possibly over looked the highest bid amount of the petitioner than that was offered by respondent No.3 in response to the auction notification. There is also no explanation as to why he could not take any recourse to make such offers to other bidders.

On the face of it, no doubt, the procedure adopted by respondent No.6 is not only arbitrary but also unsustainable apart from the fact that the entire action is without any notice to the petitioner herein or even to the other bidders. There is also no dispute to the fact that it is only on the objections raised by the petitioner herein about the acceptance of the bid by respondent No.6 in respect of the offer received from that respondent was called and it is only against that order, respondent No.3 preferred an appeal though making the petitioner also as a party, which was allowed only on the ground that respondent No.3 did not have any notice prior to such an offer. However, the appellate authority has totally failed to take note of the basic fact and correctness of the procedure adopted by respondent No.6 herein in regard to the giving such an offer directly with respondent No.3 even without any knowledge of respondent No.4 or Respondent No.2. Further, the appellate authority has totally failed to take note of the basic fact as to the locus of respondent No.3 to make any such claim nor any enforceable right as such.

However, it has been contended on behalf of respondent No.3 that he has no concern whatsoever with the absence of giving any notice or similar such offers to the other bidders and he only responded to the letter given by the respondent No.6 accepting to deposit the highest bid amount as proposed. No doubt, nothing can be attributed personally against Respondent No.3 herein, but the fact remains that the entire course of action at the instance of respondent No.6, to which respondent No.3 is a party, cannot be said to be a valid one and a fair play.

An argument was also made on behalf of the petitioner that once it is held that respondent No.3 has no such right to seek any offer from respondent No.6, the only alternative left is to give similar such offer to the petitioner who stands at the second place. However, the fact remains that there is any amount of irregularities and lapses

being committed since the inception, as a result of which, the entire auction proceedings totally gets vitiated and the interests of justice would only serve by conducting a fresh auction in a more apt way rather than allowing the things to go in the same manner at the instance of respondent No.6. In view of the same, it is more desirable that instead of conducting any such auction through an Advocate Commissioner, it is left open for respondent No.2 to take further steps and also the procedure by conducting auction through its own officers, men and machinery rather than taking any recourse to any such procedure.

In the circumstances, we hold that the auction proceedings at the instance of respondent No.6 are totally unsustainable and are accordingly set aside. We also hold that even the very appointment of respondent No.6 as Advocate Commissioner to hold any such auction is not in the interests of either respondent No.4 for whose money, the auction is held nor would it be in the interests of any prospective bidders and the third parties.

The writ petition is accordingly allowed. The entire impugned auction proceedings conducted by respondent No.2 by appointing respondent No.6 as Advocate Commissioner in O.A.No.97 of 2004 on its file are set aside and the order in M.A.156 of 2005 dated 18.11.2005 on the file of respondent No.1 is set aside. It is left open for the respondent No.2 to take such steps and conduct auction on its own and in accordance with law.

The writ petition is accordingly allowed. No order as to costs.

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B.PRAKASH RAO, J

29th December 2005

DR.G.YETHIRAJULU, J

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